IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Laxman Singh v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.2213/2007
under Article 226 of the Constitution of India.

Date of Order :: 3rd October, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary, for the petitioner.
Mr. N.M.Lodha, Additional Advocate General.

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BY THE COURT :

The petitioner, an elected Sarpanch of Gram Panchayat Chittar, has preferred this petition for writ to challenge the order dated 23.1.2007 initiating an inquiry against him as per Rule 22(2) of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as “the Rules of 1996”) and the order dated 5.4.2007 placing him under suspension.

The contentions of the petitioner while challenging the orders aforesaid are that :-

(1)the petitioner is charged for the disgraceful conduct as he is said to be

having possession over the government land, however, such possession over the land in question was not made by the petitioner but by his forefathers, hence he could not be held liable for any encroachment or trespass;

(2)the land which is said to be in possession of the petitioner as trespasser has already been regularised in favour of the petitioner, therefore, the misconduct alleged is having no foundation. Even if it is assumed that the land said to be in possession of the petitioner has not been regularised then too the same requires regularisation and in that regard a suit was already pending before the Assistant Collector, Jaitaran as prescribed under Section 88 read with Section 92-A of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as “the Act of 1955”); and

(3)the order of suspension dated 5.4.2007 was passed in mechanical exercise of powers and without ascertaining the need for placing the petitioner under suspension.

In reply to the writ petition the respondents have denied the fact that the order of suspension was passed without application of mind. It is asserted that the petitioner is admittedly having encroachment

on government land and he has deposited fine in that regard time to time. The conduct of a person having encroachment on government land is certainly disgraceful and such person deserves to be charged for misconduct as per provisions of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as “the Act of 1994”) and the Rules framed thereunder. The respondents have also placed on record a set of photocopies relating to the proceedings resulting in suspension of the petitioner and initiation of the inquiry.

Heard counsel for the parties.

The petitioner has approached this Court with an admission that he is having possession over a government land but that does not amount any misconduct. The contention of the petitioner is that the possession over the land in dispute is from last so many decades and even that is prior to his birth. He acquired possession over the land by inheritance, thus, no misconduct as alleged was committed by him. The petitioner has also asserted that he has already filed a revenue suit for getting the land in question regularised in his favour as per the provisions of the Act of 1955, however, the petitioner has not denied the fact that for keeping possession over the land in question a fine was imposed upon him and he deposited the same. It is also not in dispute that the

petitioner filed a revenue suit before the Assistant Collector, Jaitaran under Section 88 read with Section 92-A of the Act of 1955 after service of charge sheet that is subject matter in present controversy. The respondents have denied the fact that the possession over the land in question was acquired by the petitioner inheritance. It is asserted that the petitioner accepted his encroachment, therefore, his conduct is certainly disgraceful and that requires adjudication as per provisions of the Act of 1994 and the Rules framed thereunder. The issue with regard to term of possession over the land in dispute by the petitioner is highly disputed. The only admitted position is that the petitioner is having possession over the land which is a government land. The respondents have framed a definite charge on basis of possession of the petitioner over the land in dispute and the question as to whether that possession is quite old or was made by the petitioner himself or that stood regularised or not are required to be examined by inquiring authority and not by this Court.

It is stated by counsel for the State that the inquiry proceedings are at final stage and shall be completed expeditiously, on this count also it shall not be appropriate to examine the issue as to whether the charge levelled against the petitioner constitutes misconduct or not. It is also relevant to note that the petitioner after receiving charge sheet

did not choose to assail the same immediately by way of filing the writ petition and the writ petition was filed only after receiving an order of suspension. The petitioner, thus, willingly participated in inquiry proceedings and as a matter of fact it was only his suspension that prompted him to approach this Court.

The question with regard to placement under suspension certainly requires thorough examination. This Court in the case of Smt. Vimla Devi v. State of Rajasthan & Ors., SBCivil Writ Petition No.3729/2007, decided on 17.8.2007, while dealing with an issue relating to suspension of an elected representative, held as under:-

> "The power to take disciplinary action against an elected member/office bearer is available to the State, however, that should be exercised with all caution by keeping in mind that it may not hurt democratic values as well as autonomy of the Board. The power as given under Section 63 of the Act of 1959 including a power to place a member/office bearer of the Municipal Board under suspension should be exercised sparingly and only after reaching at a conclusion that holding of a fair inquiry against a delinquent shall be almost impossible without resorting to his/her suspension. It must be understood that suspension of an elected member virtually amount to put the voice of people to whom he/she represents in

abeyance and such action is an exception to the democratic values, therefore, all possible efforts should always be made to conduct an inquiry by maintaining high traditions of democracy. In a democratic system the conduct and image of peoples representative is of prime consideration, therefore, the person conducting inquiry may that be judicial inquiry should conclude it as expeditiously as possible by maintaining all fairness and objectivity irrespective of the fact that the member/office bearer is under suspension or not."

"The basic philosophy to keep the authority of an elected representative of people in absence by way of suspension is that his acts on face appears against the interest of people, and his/her continuation in office may effect the process of investigation, hence, in every case where State desire to exercise powers under Section 64(4) of the Act of 1959, it must satisfy itself that a fair inquiry shall be reasonably impracticable without exercising such powers, and the satisfaction so arrived must be recorded though it is not required to be communicated to the person concerned till demanded. What it appears that the State Government in every case where a decision is taken to hold an inquiry as per the provisions of Section 63 of the Act of 1959 in quite routine manner places the delinquent under suspension. The theory of suspension as applicable in service jurisprudence cannot and should not be imposed or adopted in the matters relating to the elected persons."

In the instant matter I have gone through the record available and found that the respondents just on framing of the charge placed the petitioner under suspension. It was not at all examined by the respondents as to how and why the suspension of the petitioner is warranted. The mechanical exercise of powers on part of the respondents in placing the petitioner under suspension is apparent. The competent authority while making an order for suspension of the petitioner made a note, that reads as follows:-

> "इस प्रकरण में ग्राम पंचायत के सरपंच का अतिक्रमण होना सिद्ध माना है इसलिए सरपंच को निलम्बित करने का आदेश दिया जाता है।..... एस.डी.
> 3-4-07"

The decision taken by the competent authority is not at all in accordance with the law laid down by this Court in the case of Smt. Vimla Devi (supra) and, thus, for the reasons referred therein the order of suspension is certainly bad in eye of law.

Accordingly, this petition for writ is allowed in part. The order of suspension dated 5.4.2007 is declared illegal and the same, therefore, is quashed. The respondents may proceed against the petitioner with inquiry, however, they are required to decide the same expeditiously. The petitioner is

directed to cooperate with the respondents and the inquiry officer for expeditious conclusion of the inquiry. In the event the petitioner do not cooperate with the inquiry, the inquiry officer may record the reasons and proceed exparte directly in accordance with law and submit his report to the government. The government shall also pass an appropriate order on the said report as early as possible.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.